

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

**GREG PRICE, individually and on behalf
of all others similarly situated,**

Plaintiff

v.

**SEIU UNITED HEALTHCARE
WORKERS WEST, and DOES 1-10
inclusive,**

Defendant

CASE NO. 1:20-CV-0385 AWI SKO

**ORDER VACATING HEARING AND
DENYING MOTION TO DISMISS AS
MOOT**

(Doc. No. 5)

On April 2, 2020, Defendant filed a Rule 12(b)(6) motion to dismiss. See Doc. No. 5. Hearing on this motion is set for May 4, 2019. On April 20, 2020, Plaintiff filed a first amended complaint. See Doc. No. 7.

Federal Rule of Civil Procedure 15 governs amended pleadings. In pertinent part, Rule 15(a) reads: “A party may amend its pleading once as a matter of course within . . . , if the pleading is one to which a responsive pleading is required, 21 days after service of the responsive pleading or 21 days after service of a motion under Rule 12(b)” Fed. R. Civ. P. 15(a)(1)(B). A properly filed “amended complaint supersedes the original [complaint], the latter being treated thereafter as non-existent.” Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015); Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

Here, Plaintiff’s amended complaint is timely under Rule 15(a)(1)(B) since it was filed within 21 days of the motion to dismiss. Defendant’s motion now attacks a complaint that is no longer operative. Ramirez, 806 F.3d at 1008. Therefore, the hearing on Defendant’s motion to dismiss is unnecessary and will be vacated, and the motion to dismiss will be denied as moot. Id.

Accordingly, IT IS HEREBY ORDERED that:

1. The May 4, 2020, hearing is VACATED;
2. Defendant's motion to dismiss (Doc. No. 5) is DENIED as MOOT; and
3. Defendant may file a responsive motion or pleading to the First Amended Complaint within twenty-one (21) days of service of this order.

IT IS SO ORDERED.

Dated: April 28, 2020



SENIOR DISTRICT JUDGE